

Approved as Submitted: June 4, 2003

**CITY OF MORGAN HILL
JOINT REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MAY 21, 2003**

CALL TO ORDER

Mayor Pro Tempore/Vice-chair Chang announced that Mayor/Chairman Kennedy and Council/Agency Member Sellers have been delayed. Therefore, items necessitating action would be delayed.

City Attorney Leichter indicated that the meeting can not technically be started but that the two council members present can hear reports from the City Manager and City Attorney and any other reports that would normally be heard before a meeting.

CITY COUNCIL SUB-COMMITTEE REPORTS

Council Member Carr reported on the Legislative Subcommittee, indicating that the Subcommittee met last week to review several legislative bills. He highlighted the legislative bills distributed this evening and identified the Subcommittee's recommended position on each of the bills.

Mayor Pro Tempore Chang indicated that she, Mayor Kennedy, Council Member Sellers, and City Manager Tewes made a trip to Sacramento last Wednesday and Thursday. She stated that on Wednesday, there was an announcement of the Governor's new budget proposal. The announcement was not as bad as proposed six months ago. There is an approximately \$40 billion deficit on the State's budget. The Governor is proposing to make up the deficit in two years. Within the two years, the Governor will try to increase the sales tax by ½% and increase the vehicle license fee to the level of three-four years ago. With this proposal, the City's budget will not be impacted as originally anticipated. She said that it was a good Sacramento session. She indicated that local elected officials visited state legislators such as Senators McPherson and Torlakson; and Assemblymen John Laird, Simon Salinas and Manny Diaz to discuss the seriousness of the budget and the need to keep cities' budgets in tack. On the second day, City leaders spent a lot of time talking to Assemblyman Laird about the perchlorate problem and possible legislative actions that can be undertaken to assist the City with the perchlorate issue.

CITY MANAGER REPORT

City Manager Tewes indicated that the past week, staff introduced the budget process by delivering the recommended budget for Fiscal Year 2003-04. He said that this is a difficult budget as there are three major challenges facing the City: 1) local revenues and the local economy are not generating enough revenue to support the historic levels of services (revenues not keeping up with spending); 2) the City's costs continue to increase; and 3) although the Governor's proposal is somewhat encouraging, it is not receiving the rave review everywhere in Sacramento. Therefore, staff is still concerned about the uncertainty of the State's budget and its impact to the City. He indicated that later this week, the Council will begin a series of meetings to review the budget. Public input will be sought on June 11 and June 18. With respect to perchlorate, over the past several months, some wells in the San Martin and

Morgan Hill community have detected trace amounts of perchlorate. He stated that for drinking water in Morgan Hill, all residents can be assured that the City has taken extraordinary steps to make sure that the water being delivered to the community is safe and meets or exceeds all of the State's standards. Staff has done so even when state regulations would not require the City to take wells out of service. City staff will continue to monitor wells on a monthly basis. He stated that the next monthly report will be made available next week. He stated that the City has gone beyond required regulations of the State, both in monitoring and testing. The City has gone beyond by taking wells out of service even though they have not reached the levels required under State regulations.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the Monthly Litigation Report has been distributed, noting that the only change from the previous report is the deletion of the Calpine case. She informed the Council that the petition for review has been denied by the California Supreme Court and that until such time that as an appeal is filed in one of the many Calpine cases the City has participated in, they will remain off the litigation summary.

SILENT INVOCATION

Mayor Pro Tempore/Vice-chair Chang invited the public to join her in a moment of silent invocation in memory of Ken Tougas.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor Pro Tempore/Vice-chair Chang, Scott Tougas led the Pledge of Allegiance.

RECOGNITIONS

Mayor Pro Tempore/Vice-chair Chang presented, and City Manager Tewes read, the Certificate of Recognition in Memory of Ken Tougas to Scott and Jack Tougas, recognizing him for his outstanding volunteer efforts for the Morgan Hill community during his lifetime.

Mayor Pro Tempore Chang said that this afternoon, Mayor Kennedy indicated that he would like to find a place in Morgan Hill to honor Ken Tougas on a permanent basis such as naming a street after him. Others suggested that a plaque be placed in the senior center to honor Mr. Tougas. She stated that everyone believes that Mr. Tougas is someone who cannot be replaced.

Mayor/Chairman Kennedy and Council/Agency Member Sellers entered and took their seats on the dias.

Mayor Kennedy stated that as Mr. Tougas' services this afternoon that he was a wonderful example of what community service is all about as he has done so much for the community. He stated that it is his hope that the legacy that he has set can be memorialized in some way in Morgan Hill so that his memory will not be forgotten. It is his hope that civic leaders will come up with a way to permanently honor and recognize Mr. Tougas.

OTHER REPORTS

None.

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 7:31 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers Mayor/Agency Chairperson Kennedy
Absent: Council/Agency Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CITY COUNCIL REPORT

Mayor Kennedy did not present a report this evening.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Queena Deschene, Live Oak High School student, invited the Council to Live Oak High School's "Evening of Diversity," a cultural event held every year by the Diversity Club. The event will be held on Tuesday May 27, at 7:00 p.m.

Cindy Gobin requested that the Council agendaize the discussion of a test garden for perchlorate next week as the City will be discussing water issues at that time. She is hoping that the community would be able to use Live Oak High School's garden if it is on city water to test for perchlorate. She said that the El Toro Elementary School has a garden. She hopes that the City urges the County or a responsible party to test the garden for any amount of perchlorate in what is grown. She felt that everyone would rest easy once the test results are in.

Mayor Kennedy indicated that the City would need to partner with the School District. He said that the City Manager and he will discuss Ms. Gobin's request with the School District or that the City-School Liaison Committee can discuss this issue at one of their meetings. He said that the City will seek the appropriate venue to address the request.

Mayor Pro Tempore Chang stated that all City wells are non-detect for perchlorate. She inquired whether it was being suggested that the City go outside of its jurisdiction for water testing.

Ms. Gobin indicated that the City's wells are returning as non-detect which means that there is less than 4 parts per billion of perchlorate in the City's well. However, she has read various different reports on how much vegetables concentrate the perchlorate in leaves. It was indicated, in meetings held in San Martin that root stocks may absorb perchlorate at one level, leaves and other fruits at another level. She felt that the only way to test if non-detect perchlorate is under 4 ppb is to grow vegetables and test them. If it is zero or a non-detect number, she felt that it would be a wonderful thing.

City Manager Tewes said that it would be important to discuss this issue with the County Agricultural Commissioner who has expressed concern about the need for controlled experiments and careful examination of the data. The Commissioner has indicated that he is concerned about the effects of perchlorate. If there needs to be discussions with the County Agricultural Commissioner, he was not sure if staff could return with this item next week as a discussion item.

Mayor Kennedy agreed that the City has to work with the office of the County Agricultural Commissioner as well as the School District/School Board to see what makes sense.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that items 5, 11, 16 and 19 be removed from the Consent Calendar. Council Member Sellers indicated that he has a question relating to item 10.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Items 1-4; 6-9; 12-15; and 17 as follows:*

1. **APRIL 2003 FINANCE AND INVESTMENT REPORT**
 Action: **Accepted** and **Filed** Report.
2. **EXTEND THE TERMS OF APPOINTMENT FOR THE CURRENT ARCHITECTURAL REVIEW BOARD (ARB) AND PLANNING COMMISSION MEMBERS**
 Action: **Approved** the Extension of Term Appointments for ARB Members: James Fruit, Rod Martin, and Jerry Pyle; and Planning Commission Members: Joe Mueller, Bob Engles, Bob Escobar and Ralph Lyle until Such Time that Successors Are Appointed.
3. **APPROVAL OF UPCOMING CITY COUNCIL WORKSHOP MEETING DATES**
 Action: **Reviewed** and **Approved** the City Council Workshop Meeting Schedule.

4. **CITY SPONSORSHIP OF HOMETOWN HOLIDAYS INC. PROJECT**

Action: 1) **Approved** City Sponsorship of the Hometown Holidays Inc. Project to Conduct a Holiday Event, Including a Tree Decorating Contest for Local Schools, at the Community and Cultural Center; and 2) **Authorized** the City Manager to Issue a Letter to Hometown Holidays, Inc. Outlining the Terms of City Sponsorship.

6. **COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR CLASS II BIKE LANE AT LIVE OAK HIGH SCHOOL**

Action: **Adopted** Resolution No. 5668, Supporting the Application for Safe Routes to School Grant Funds for Construction of a Class II Bike Lane along the North Side of Main Street.

7. **APPROVAL OF LEASE OF NITRATE REMOVAL PLANT**

Action: 1) **Appropriated** \$38,000 from the Unappropriated Water Fund Balance to Fund a Temporary Nitrate Removal Plant at the Burnett Well Site; and 2) **Approved** Issuance of a Purchase Order to Ionics in the Amount of \$38,000 for the Lease of a Temporary Nitrate Removal Plant.

8. **AWARD OF CONTRACT FOR CONSTRUCTION OF MAIN WELL NO. 2 AND SAN PEDRO WELL EQUIPMENT PROJECT**

Action: 1) **Awarded** Contract to Conco-West Inc. for the Construction of Main Well No. 2 and San Pedro Well Equipment Project in the Amount of \$639,200.00; and 2) **Allocated** 10% Construction Contingency Funding in the Amount of \$63, 920.00 for this Project.

9. **ACCEPTANCE OF POLYBUTYLENE WATER SERVICE REPLACEMENT PROJECT, PHASE IV**

Action: 1) **Accepted** as Complete the Polybutylene Water Service Replacement Project, Phase IV in the Final Amount of \$357,384.00; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

12. **ADOPT ORDINANCE NO. 1617, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1617, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH (APN 764-32-024)/(DA-00-01: CHRISTEPH - KOSICH).**

13. **ADOPT ORDINANCE NO. 1618, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1618, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT**

AGREEMENT, DA 02-09 FOR MMP 02-02: DEWITT - MARQUEZ SUBDIVISION (APN 773-08-014).

14. ADOPT ORDINANCE NO. 1619, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1619, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-01: CHRISTEPH - KAMANGAR/PINE BROOKS TRUST (APN 764-32-025).

15. RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2003 QUARTERLY REPORT #1

Action: Accepted and Filed the Residential Development Control System (RDCS) First Quarter Report for 2003.

17. SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 30, 2003

Action: Approved the minutes as written.

5. COMMUNITY AND CULTURAL CENTER RENTAL RATES – Resolution No. 5667

Mayor Kennedy inquired if there was any progress on the insurance issue on the Community and Cultural Center rental rates.

Recreation and Community Services Manager Spier informed the Council that she and the Risk Manager are still working on getting quotes on a comprehensive policy for the facility.

Finance Director Dilles informed the Council that staff has been pursuing quotes from two insurance companies. One of these insurance companies led the City to believe that they would provide the City with a quote only to state that they could not provide the City with one. However, the insurance company stated that they could provide insurance for the Community and Cultural Center without the liquor liability. However, staff considers this to be one of its major risks; therefore, this proposal did not appear to be interesting. Staff is continuing its discussions with a second insurance company but that staff does not yet have an answer from them.

Council Member Carr said that several weeks back, staff came before the Council regarding insurance concern. Hearing now that staff is having trouble finding anyone willing to insure the City, he felt that the Council should revisit the previous report and give greater consideration to the idea of self insuring the Community and Cultural Center.

Mayor Kennedy requested that staff agendaize insurance discussion.

Council Member Sellers recommended that staff return with a status report regarding insurance for the Community and Cultural Center once the second insurance company provides staff with a response.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5667, Revising Rental and Service Fee Rates for the Community and Cultural Center.*

10. AWARD OF GALVAN PARK HANDBALL COURT AND LANDSCAPE BEAUTIFICATION PROJECT

Council Member Sellers indicated that the Council has not previously seen a project design or layout. He inquired whether this project was going to be an upgrade or whether there were to be substantive changes. If so, would the Council be able to see these changes?

City Manager Tewes stated that this project is an upgrade of existing facilities. He said that in the capital budget for next year, staff is proposing to conduct a master plan for the Galvan Park site with extensive review by the Parks and Recreation Commission as well as the City Council at that time.

Council Member Sellers indicated that he wanted to make sure that the City is not installing an improvement at this time that would be removed at a later date.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Awarded** Contract to Bellicitti & Pellicciotti Construction Co., Inc. for the Galvan Park Handball Court and Landscape Beautification Project in the Amount of \$70,724.00; and 2) **Allocated** 10% Construction Contingency Funding in the Amount of \$7,076.00 for This Project.*

11. APPROVE PURCHASE ORDER FOR REPLACEMENT SKID MOUNTED 75 KW DIESEL GENERATOR AND AUTOMATIC TRANSFER SWITCH AT “C” LIFT STATION

Mayor Kennedy noted that the report indicates that this is a fairly old facility and that it was his belief that the City replaced all of the old facilities. He inquired as to the age of this particular facility.

Director of Public Works responded that the facility is approximately 25-30 years. He indicated that the City has two old lift stations remaining and that this is one of them.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Purchase of a Skid Mounted 75kw Diesel Generator and Automatic Transfer Switch Replacement in the Amount of \$36,465.00.*

16. 2002 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY

Mayor Kennedy requested that staff present a report on this item.

City Manager Tewes reported that each year, the City is required under State law, but more importantly; the City wants to communicate with its customers, about the quality of the water that is provided. He said that it is the City's goal to meet or exceed all of the State standards. This confidence report indicates that the City has met or exceeded State standards. The confidence report also indicates that wells in San Martin and some of the domestic wells have detected for trace amounts of perchlorate, but not at levels that require that the City take action. The City has taken these wells off line as an abundance of caution. He stated that there was information contained in the annual consumer confidence report about all of the elements in the water, the levels that are established by state and federal laws, and how the City meets or exceeds these standards. He indicated that this report will be mailed to all citizens in the community over the next few weeks.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Received** the Informational report.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, **Approved** Consent Calendar Item 18 as follows:*

18. SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 30, 2003

Action: ***Approved** the minutes as written.*

19. REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MAY 7, 2003

Mayor Kennedy indicated that he would be abstaining from the approval of the May 7, 2003 minutes.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-0-1 vote with Mayor/Chairman Kennedy abstaining and Council/Agency Member Tate absent, **Approved** the minutes as written.*

City Council Action

CONSENT CALENDAR: (continued)

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Item 20 as follows:*

20. COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR TENNANT CREEK TRAIL, PHASE I

Action: *Adopted Resolution No. 5669, Supporting the Application for Santa Clara Valley Water District Trails, Parks and Open Space Grant Funds for the Tennant Creek Trail, Phase I.*

Mayor Pro Tempore Chang indicated that she would need to step down and recuse herself from agenda item 20.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, agreed to reconsider item 20.*

Mayor Pro Tempore Chang excused herself from the dias.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, on a 3-0 vote with Mayor Pro Tempore Chang and Council Member Tate absent, Adopted Resolution No. 5669, Supporting the Application for Santa Clara Valley Water District Trails, Parks and Open Space Grant Funds for the Tennant Creek Trail, Phase I.*

Mayor Pro Tempore Chang resumed her seat on the dias.

City Council Action

PUBLIC HEARINGS:

21. ANNEXATION APPLICATION, ANX-02-01: COCHRANE BORELLO I – Resolution No. 5670

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 with Council Member Tate absent, Adopted Resolution No. 5670, for Annexation.*

22. ZONING AMENDMENT APPLICATION ZA 02-15: EAST DUNNE-HO – Ordinance No. 1620, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy noted that the building is proposed to be brought up closer to the street, inconsistent with the adjacent building which is located to the rear of the site. He also noted that Nordstrom Park is

located on Murphy Avenue which also has an open/green space facing both Murphy and Dunne Avenues. Should the building be built as designed, it appears to be out of place in this context. He inquired whether the design process has commenced.

Mr. Bischoff indicated that the applicant has commenced with the design process. Further, it is the applicant's intent to submit plans that are very close, if not identical, to what has been presented this evening. Should the Council approve the zoning amendment application as submitted this evening, it would require that the building be placed next to the street and that the parking be located to the rear. He stated that when the City updated the general plan in 2001, there was an urban design section that encouraged buildings to be brought up toward the street to hide parking and create an urban feel. He said that one of the segments dealt with in the General Plan update was urban design that addressed parking and building designs and their relationship to the street and streetscape. He indicated that the setback from the front of the building to Dunne and Murphy Avenues is 30 feet from the property line; 40 feet from the curb.

Council Member Carr indicated that the City recently completed the Murphy Corridor Study and that the Council would be reviewing this Study in a couple of weeks. He inquired how this project would impact this Study or vice versa.

Mr. Bischoff indicated that this project reserves sufficient right of way, consistent with the existing General Plan. The existing General Plan shows Murphy as a four lane arterial. Two of the three alternatives that the Council will be reviewing as part of the Murphy Corridor Study shows Murphy as four lanes. The third alternative shows Murphy as two lanes. If the third alternative or other alternatives shows Murphy as two lanes, the City would have to move a section of pavement. However, it could be stripped in such a way to allow two travel lanes.

Council Member Carr stated that he seems to recall, as the Council asked for the Murphy Study to be undertaken, that it was considering the intensity of uses along this area and whether some of the intensities made sense according to what the City would find in the corridor itself. He inquired whether this would impact this PUD and the zoning, depending on what the use of Murphy will ultimately will be.

Mr. Bischoff indicated that staff looked at a reduction in the intensity of use. Because of the amount of through traffic in this area, staff did not identify any changes to the land use within the area that were sufficient to reduce the traffic volumes enough to mitigate or eliminate the need for Murphy Avenue to be four lanes or reduce it to two lanes. Staff was not able to find a sufficient reduction in intensity in land use to make a difference in part because there is as much through traffic in the area and part of it is due to the uses on Cochrane Road. He did not believe that there would be a conflict in moving forward with the approval of this PUD and the Murphy Corridor Study unless there is an alternative that was not included in the report.

Council Member Carr said that his concern is not that the City would make Murphy Avenue so big that it would impede upon this center but the intensity of the center is one that would limit alternatives for Murphy Avenue. However, he is hearing that this is not the case.

Mayor Kennedy opened the public hearing.

Vince Burgess, Development Processing Consultants, indicated that the applicant came to him after working closely with staff on design elements/location of the buildings. He said that there has been coordination with the Architectural Review Board members and that he has worked closely in tying in their recommendation. This project has worked toward the coordination of the circulation elements as well as the rights of way.

No further comment being offered, the public hearing was closed.

Council Member Carr stated his appreciation of Mayor Kennedy's concern as he has heard him mention this concern in other places where the City tried to draw buildings to the front. He noted that Mayor Kennedy has not been particularly pleased with how these projects have turned out. He was also concerned but that after viewing the map and the drawings, he was less concerned. He appreciated the tie in with adjoining pieces of property and that if there was a way to include a park in the corner, it would tie in nicely with Nordstrom Park. However, he felt that the design of the building would be attractive on the street front and that it should not be hidden in the back of the parking lot. He said that the General Plan Update Committee discussed this issue. Perhaps, the overall idea of having the buildings closer to the street does not fit perfectly across the entire community and that the Council needs to think about this policy in this context.

Mayor Pro Tempore Chang supported further discussion of this General Plan Policy issue because she did not believe that having buildings up the street should be required uniformly throughout the city.

Mayor Kennedy requested that staff agendaizing the General Plan policy issue for discussion and direction to the Planning Commission (buildings siting).

Council Member Sellers recommended agendaizing this item after Council Member Tate returns because of his background and interest on this subject.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1620, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1620, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A DEVELOPMENT PLAN AND DEVELOPMENT GUIDELINES FOR A 3 LOT COMMERCIAL***

DEVELOPMENT ON A 3.88-ACRE PLANNED UNIT DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE BETWEEN CONDIT ROAD AND MURPHY AVENUE (APNS 728-17-16, 17 & 23) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.

Mayor Kennedy indicated that he has a speaker card from Cynthia Bunch relating to agenda item 13, noting that the Council already approved item 13 as part of the Consent Calendar. He requested that Ms. Bunch meet with him during the break to discuss item 13.

City Council Action

OTHER BUSINESS:

23. FILLING UPCOMING VACANCY ON THE MOBILE HOME RENT COMMISSION

Council Services and Records Manager Torrez presented the staff report.

Council Member Sellers said that Mr. Moore's service on the Mobile Home Rent Commission has been long term. He has done a great job and is a dedicated Commissioner. He did not see a reason for having the Council interview Mr. Moore for reappointment.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Reappointed** Mark Moore to Serve a Two-Year Term, Expiring June 1, 2005; serving as the tenant representative to the Mobile Home Rent Commission.*

24. CITY CO-SPONSORSHIP WITH THE MORGAN HILL SISTER CITY COMMITTEE FOR "JAZZ ON THE GREEN" CONCERT

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that City co-sponsorship of this event will allow the Sister City Committee to promote the event in the City Visions Newsletter. Further, the Sister City Committee is not requesting funds for this effort. He informed the Council that Chuck Dillmann, president of the Sister Cities Committee, was in attendance to answer any questions that the Council may have.

Mayor Kennedy opened the floor to public comment.

Chuck Dillmann indicated that the Sister Cities Committee is not requesting funding but is requesting City co sponsorship in order to be able to advertise this event in City Visions and for the prestige of having the City involved in this event. He stated that there will be two jazz bands performing: Britton Jazz Band and the San Jose Buscher Jazz Band.

Mayor Kennedy said that this is a project that the Sister City Committee has been partnering with the Britton Jazz Band on this event. It looks like a wonderful opportunity for the community. This event will take place on Friday, June 6, 5:30 p.m. at the Community Amphitheater. He requested the Council's support as a co sponsor.

Mr. Dillmann said that there is no cost to attend the event but that donations will be accepted to help defray the bands cost to Italy in 2004.

No further comments were offered.

Council Member Sellers said that at last week's Art a La Cart event, it was great to see that these types of events can take place. He stated his support of the event.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** a City Co-Sponsorship/Promotion with the Morgan Hill Sister City Committee of the "Jazz on the Green" Concert.*

25. MORGAN HILL GENERAL PLAN: REVIEW OF EFFECT OF GROWTH RATE ON TRAFFIC IMPACTS

Director of Community Development Bischoff presented the staff report. He informed the Council that the City needs to develop standards for unsignalized intersection levels of service. He requested that the Council direct staff to establish this level of service for unsignalized intersections. Staff would bring this back as part of the next round of General Plan amendments to be considered by the Council in July. At the request of Mayor Kennedy, he defined the different traffic service levels.

Mayor Kennedy felt that it appears the City is accepting, in theory, traffic level of service standards (LOS) of D+. He felt that it was important to understand what an LOS D+ means as compared to C+.

Mr. Bischoff indicated that he would provide the definitions of the various levels of service standards but that it was his belief that the level of service D allows for some traffic delay. However, the delays would suggest that if an individual is at a signalized intersection, you can expect a wait of 30 seconds or more.

Council Member Carr said that the General Plan Task Force did not believe that LOS D or D+ were passing grades. However, there was a trade off in that the Task Force was not willing to state that intersections needed triple left hand turn lanes or double right hand turn lanes in areas that are clearly not appropriate for Morgan Hill. The Task Force was willing to accept a level that may, on the surface sound unacceptable, but that it was clearly much better than the trade off would have been.

Mr. Bischoff said that although an LOS D/D+ may sound unacceptable, it is clearly superior to the level of service one would experience in other parts of Santa Clara County, north of Morgan Hill.

Council Member Sellers said that this information would be helpful as the City proceeds on this and in upcoming years.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Kennedy noted that staff mentioned an example of a situation where all development would occur along Cochrane and very little on Tennant or vice versa. He stated that each project would be required to provide its own noise and traffic impacts associated with development. Therefore, the Planning Commission and the City Council will have the opportunity to review the impacts before moving forward with a project.

Mr. Bischoff indicated that staff is not suggesting that the City should lower its standards. However, through the traffic impact analysis, the City will determine ways to adequately mitigate the impacts.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Directed** Staff to Include with the Next Amendments of the General Plan a Policy Establishing a Level of Service Standard for Unsignalized Intersections.*

Redevelopment Agency Action

OTHER BUSINESS:

Start Here

26. ROYAL COURT HOUSING PROJECT LOAN

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that Jan Lindanthal with South County Housing was in attendance to make a brief presentation to the Council on the project.

Chairman Kennedy opened the floor to public comment.

Jan Lindanthal indicated that the project was put together in response to Council comments from December 2002 regarding the density of the surrounding properties. She identified the zoning and densities of surrounding properties. She indicated that the density of the proposed site would be 6-14 dwelling units per acre along the front and the multi family portion would be 18-20 dwellings units per acre. She stated that the site plan has been reviewed by the design review committee. Changes have been made based on comments and that they have been incorporated into the design. The architect was requested to produce conceptual elevations of what the townhouses would look like, looking from Del Monte Avenue. She indicated that two significant oak trees were driving development and constraining the density on the site. She requested Agency feedback on the direction South County Housing is heading. She said that it is her intention to move forward with a PUD zoning application and tentative

map submittal in late summer or early fall in order to start construction of the first phase of the project in Spring 2004. Based on comments received at the Comprehensive Housing Strategy held a few weeks ago, she has been looking at alternatives to increase the density of the townhouses. She stated that this could be done in a number of ways by adding additional units along Del Monte Avenue which would be the least preferable from her perspective. Four units could be added to the rear or in another portion of the site. However, the challenge of these areas is parking (shared parking arrangement with the commercial portion of the project). She requested Council feedback regarding the proposed mixed use component. She indicated that South County Housing has secured \$200,000 in funding from the County Home Program that will be used to supplement the City's financing; making four of the townhomes affordable to low income homebuyers.

Chairman Kennedy inquired as to the range of affordability of the units.

Ms. Lindanthal responded that assuming the 13 unit scenario, $\frac{1}{3}$ of the units would be at low (up to 80% of median); $\frac{1}{3}$ of the units would be at 80-100% of medium; and $\frac{1}{3}$ of the units would be at the moderate income range (up to 120% of median). She indicated that commercial uses are adjacent to the use, including Hill Haven Mobile Home Park. She stated that she has some concern about transitioning between the commercial and residential uses. This keeps South County Housing staff thinking whether or not a mixed use makes sense as this may help with the transition of uses/create a streetscape along Monterey Road.

Agency Member Carr said that the a value he finds in considering the mixed use is that by adding units to the front, in the commercial area, some of the units could be removed from the middle of the site, retaining the overall number of units. This would open up parking in the middle of the site so that the shared use agreement for parking would not be as great from one end of the project to the other. He noted that staff indicated that there were 13 existing units and that there is a possibility of adding four units.

Director of Business Assistance and Housing Services Toy noted that several months ago, the Agency modified a policy and allowed for three exemption units based on the Butterfield extension to Tennant. Therefore, there are three credits for three single family homes. To add a fourth unit would necessitate going through measure P. He said that this project could have the potential of moving forward with 16 townhome units without having to go through a Measure P competition.

Agency Member Carr inquired how the project would incorporate the additional three units in order to achieve the maximum amount of units for the project.

Ms. Lindanthal indicated that South County Housing staff looked at a couple of different options to incorporate three additional units. One alternative would be to add the three units along the frontage, encroaching slightly into an open space area. This would create a monolithic streetscape and less variation. A second alternative would be to add three units to a section of the project which decreases the parking area to be provided. Another alternative would be to add three units at a different section of the site but would also impact the parking. She indicated that it is proposed to have 16 townhomes and 44 apartment units for a total of 60 units. This would result in slightly under 12 units per acre.

Chairman Kennedy recommended that a portion of the adjacent vacant land be purchased or that the entire commercial property be purchased.

Ms. Lindanthal indicated that she has been working toward this effort.

No further comments were offered.

Mr. Toy informed the Agency that the design is in the conceptual stages and that he would still need to work closely with the Planning department to identify the different issues/concepts. He said that there will still be an opportunity for the Agency to review the design concepts. He indicated that for the ownership units, the City would convert part of the loan into silent seconds/down payment assistance. When these units are sold, the Agency would get paid back with respect to the apartment units, it would be conceivable that the City would get some money back. He said that this is an open ended issue as the City does not know what the financing sources will be.

Agency Member Sellers said that it would be an attractive option to be able to reuse funds, especially when the future of the RDA is unknown. He encouraged everyone to do what they can to structure the assistance such that the City is able to reuse the funds. He concurred with Agency Member Carr about wanting to have more units (up to 16 units). However, he was anxious about placing them all on the frontage of Del Monte Avenue. He recommended that the project maintain an interest as much as possible. Regarding the Monterey frontage, he strongly favored a mixed use as it would provide a transition in uses. He noted that residential units exist along Monterey Road and that there is a mixed use in the area. He recommended that a higher standard be considered as part of the mixed use. He felt that it was important to spread the traffic flow and the parking throughout the project. It made sense for the City to do what it can to minimize the loan amount. He recommended that the project's cost be further minimized through other loans or options as the City needs to start looking at ways to reuse and recycle funds.

Chairman Kennedy concurred with Agency Member Sellers that this is a good start and that he likes the general idea of the project. He encouraged City staff and South County Housing staff to be creative in assembling more parcels in order to make the project work a little better as the project appears to be confined by the adjacent uses. He stated that this area has historically experienced problems based with the mixed of land uses. He requested that South County Housing and City staff do everything possible to be creative in finding ways to make the project work. He stated his support of the project in concept and agreed that the City needs to move forward with it.

Action: *On a motion by Vice-chair Chang and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Tate absent, **Approved** a Loan of Up to \$3.75 Million Dollars to South County Housing Corporation (SCH) to Develop the Royal Court Housing Project.*

Action: *On a motion by Vice-chair Chang and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Tate absent, **Authorized** the Executive*

Director to do Everything Necessary and Appropriate to Execute and Implement the Loan Agreement.

Action: *On a motion by Vice-chair Chang and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Tate, **Appropriated** \$350,000 from Fund 327.*

27. FACADE IMPROVEMENT PROGRAM

Director of Business Assistance and Housing Services Toy presented the staff reports for items 27 and 28 at this time.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

28. RENOVATION OF THE ISAACSON GRANARY

Mayor/Chairman Kennedy inquired as to the process to proceed with a deferred improvement agreement.

Mr. Toy addressed the deferred improvement process, indicating that the property owner would have to appear before the Planning Commission. The Planning Commission would have to make specific findings and indicate that this application qualifies for an exemption. Based on this action, the Planning Commission would make a recommendation to the Council. The Council would then need to decide whether to accept the report and grant the exception. He clarified that the City does not have a mechanism to defer improvements in the Municipal Code.

City Attorney/Agency Counsel Leichter indicated that the Council amended the municipal code relating to deferred improvement agrees as there were some questions regarding the legalities of deferring the improvements. Also, there were duplicate provisions to other deferred improvement programs.

Director of Public Works Ashcraft indicated that the City has approximately 40-50 old deferred improvements agreements that are recorded against lands that states that at some future date the City would return to request installation of improvements. He indicated that former City Attorney Baum tried to enforce one or more of the deferred improvements agreements but that he could not enforce them in court in the early 1990s. He came back to the Council and requested that the Council take this provision out of City codes. He said that there is a project at this time on Tennant Avenue near Church Street that has an old deferred improvement agreement that states that the property owner should dedicate land and install the improvements, when requested. He indicated that the property owner is doing neither. He said that this is an issue that he and the City Attorney are dealing with at this time. Therefore, a deferred improvement agreement does not mean that the improvements will be installed when needed. He indicated that there is no authority to enter into a deferred improvement agreement at this time. He said that the process addressed by Mr. Toy is a provision contained in the City code that

has not been exercised in several years and is similar to a variance that is within the purview of the Planning Commission. Should the Planning Commission be able to make variance findings, they could recommend the City Council grant relief to the developer/property owner.

Mayor/Chairman Kennedy inquired if there was a mechanism whereby the City could have a legally binding deferred agreement that would work (e.g., property owner places funds into a trust that can be called upon when the City requires that the improvements be installed).

Mr. Ashcraft said that funds in an account could work but that the City Attorney would need to address the agreement. He indicated that what the City has been doing for years is that someone installs the undergrounding, or if the property owner/developer does not believe that they should provide the undergrounding and want to pay in lieu fees, the Council considers the request to approve the in lieu fees. The City is paid cash and this money is put into an underground fund to be used at time of development that can be applied toward a larger scaled project.

Mayor/Chairman Kennedy opened the floor to public comment.

Charles Weston addressed the deferred agreement and stated that he was trying to set up a process such that when he develops the vacant piece of land as a Measure P project, he would state in his narrative that he would agree to underground the utilities not only for that portion of the residential portion of the project but for the remainder of the Granary. He indicated that undergrounding would cost approximately \$600 per linear feet. If he is made to pay the in lieu fee, he would only be required to pay \$100 per linear feet and the City would pay the rest. He did not believe that this was a deal that the City could pass up. He did not believe that it was fair for the City to install the undergrounding that he owns but that he cannot afford to install the improvements at this time. Deferring the improvements until he develops the northern portion of the site would save the City a lot of money. He stated that when he first started the process of determining how much funding he would need, he was originally under the impression that on and off site improvements would not be required similar to the development of Giancarlo's restaurant who was given an exemption. He said that it would be a convenience for him and Mr. Isaacson to split the total cost into a manageable amount. This would allow him to get a loan of \$350,000 from the City, include the \$50,000 that he has put in and another \$50,000 subsequent to funding being approved. He did not anticipate having to perform the undergrounding nor was he anticipating to perform any of the on/off site improvements. He stated that the cost of the undergrounding, in lieu fees or any off site improvements would be offset by the City granting him facade improvement grants. He realized that the City may have believed that granting him the \$350,000 was all that would be required to develop the Granary site. He stated that he considered this to be a loan that the City would get back with interest within a certain prescribed period of time and that the facade improvement would be a grant. He was not stating that he was an exceptional case but stating that he has a building that needs improvement and was seeking entitlements that the City has to offer to improve his property.

No further comments were offered.

Council/Agency Member Carr recommended that no action be taken on the request this evening as one of the members of the Economic Development Committee was not present this evening. He felt that several of these issues have not been considered by the Economic Development Committee. He was not suggesting that the request needs to go back to the Committee because he understands that there is a lot of interest on the Council/Agency to move forward on these types of economic development items. He felt that having a five member council consider this item would be a great advantage and would give staff and the applicant time to spend talking about these issues. He noted that there has been some discussion about ways of coming closer together. He felt that this opportunity would present itself with coming back with a better proposal that includes the entire package instead of different pieces being strung along to a package.

Council/Agency Member Sellers inquired whether a 30-day delay would interfere with the applicant's plans.

Mr. Weston said that the close of escrow is scheduled for June 20, 2003. This period was extended from June 9 recently. He does not know if he would know all he needs to know everything about the financial components. He noted that the \$350,000 loan document is scheduled to come before the Agency on June 18. He said that he has worked closely with Mr. Toy and felt that the compromise reached was fair. He did not know if things would change in 30-days regardless of whether Agency/Council Member Tate was present.

Mayor Pro Tempore/Agency Member Chang inquired as to the amount of the in lieu fee.

Mr. Toy responded that the in lieu fee would equate to approximately \$37,000 on Depot Street (370 linear feet at \$100 a lineal foot). He indicated that the Monterey would not have any requirements placed on it until such time that it develops. He indicated that staff approximates that it would cost \$300 a linear feet to underground the utilities.

Mr. Ashcraft indicated that staff does not know the actual cost of undergrounding and that in order to determine the actual cost; someone would have to design the improvements. Staff estimates the cost of the total undergrounding of Depot Street at \$300 per lineal feet. If Mr. Weston pays \$100 per lineal feet, it is one street that would cost the City more to install the improvement than it collects. He indicated that the \$100 collected is based on an average. He indicated that the City receives Utility 28 funds periodically from PG&E for undergrounding. He said that undergrounding would make the area safer and aesthetically pleasing. He indicated that once the City allows someone to pay in lieu fees, undergrounding would not be required. Therefore, the City would be paying for the undergrounding. He said that it would be up to the City to underground at a later date. He stated that it is estimated to cost \$300 per linear feet in today's cost and that this cost would increase in later years. If allowed to collect only \$100, it would be consistent with other projects in the community.

In response to Mayor/Chairman Kennedy's question, City Attorney/Agency Counsel Leichter indicated that the City has not allowed a developer to pay in lieu fees over time?

Mr. Toy said that the city does not currently have a program for utility undergrounding but that it does have a program for sewer and traffic financing programs. The City also has a small business fee deferral program which could help to finance the project. He said that 2-3 years ago, staff brought before the Council/Agency a conceptual program to help with utility undergrounding and provide some funds to assist with payment of in lieu fees. At that time, the City decided not to continue with this program.

Mayor/Chairman Kennedy noted that this project would remove a blighted area and that he would like to see this project move forward in a way that was fair and equitable to everyone similar to the sewer and water loans. He stated that he would be supportive of a creative way to allow this project to move forward.

Council/Agency Member Sellers concurred with moving forward with the facade grant. However, he felt that the discussion of utilities is a larger issue. He noted that the applicant is willing to work with the City but that the suggestions are different from what the City is used. He recommended that this discussion take place on June 18 and that staff be given the opportunity to review some of the options to determine what would make sense as far as the whole issue of deferring improvements and study any legal issues. He said that facade improvement grants exist to help projects go above and beyond the kind of site improvements that an owner can perform on their own. He said that this is a project that will perform minimal improvements but could do more with a facade grant. Therefore, he would recommend that the Council/Agency move forward with the facade grant. He felt that there were broader policy issues relating to utility undergrounding and recommended that further discussion be deferred to June 18.

Mayor Pro Tempore/Vice-chair Chang concurred with the comments expressed by Council/Agency Member Sellers. She considers this property a nice piece of property and that it needs a beautification program to enhance the site. Therefore, she would support the facade program. She would agree to discuss the undergrounding of utilities or a different program on June 18.

Council/Agency Member Carr stated that he did not oppose the project. However, he did not believe that the City is proceeding with the correct one. He stated that as an economic development committee, the committee requested that the applicant come back and work with staff on a complete project. What is being seen this evening is the result of not getting the complete project months ago. The Council/Agency decided, on a 3-2 vote, that it would grant a \$350,000 loan and move the project forward. Had the Agency/Council reviewed a complete project consisting of both parcels, it would have been easier to address the public policy issues of the undergrounding. He felt that the City will miss an opportunity to consider the entire area, an area important to the entire downtown plan. By deferring the undergrounding, the City is deferring improvement to the downtown area. He supported the request for the facade improvement grant as this is what the program was established for. If the entire project had been put together and all the financing was put in place, the City could have worked out the details. He indicated that he would not have minded a triple facade grant. As the Council/Agency is not looking at the property as an entire package, opportunities are being missed. What the City is doing is encouraging individuals to come before the Agency/Council with what is needed today versus the entire concept. He did not believe that this is how economic development should be undertaken or a way to improve blighted areas. He noted that this is an important area as talked about in the Downtown Plan.

He recommended that staff be encouraged to work with the applicant to consider the entire package. He understood that everyone wants to move forward with economic development and get some projects going. He felt that the Council/Agency should be taking the time to do things right the first time. Therefore, he could not support either actions presented on the agenda before the Council/Agency this evening.

Council/Agency Sellers concurred, in general, with a number of Council/Agency Carr's comments. He felt that the reason the project returned from the night the Council approved the \$350,000 loan was due to a misunderstanding about the undergrounding. Based on the unknown portion of the project relating to Measure P, the applicant could not submit an entire project. He felt that the City has an opportunity to significantly help jump start commercial development. He felt that the City would see the entire project when the Council/Agency reviews the utility undergrounding issues. He felt that there would still be some loose ends relating to the project, but noted that this is a unique project. He felt that the City needs to move forward on this portion of the project for the reasons identified this evening.

Mayor Pro Tempore/Vice-chair Chang felt that the downtown was a new focus and should remain as a main focus. It was her hope that the Council/Agency uses this project as an example and that from henceforth, every project that comes before the City will be an entire package. She noted the Council/Agency has already approved one segment of the project. She felt that the City is looking at this project as a whole project at this time. She would support looking into the underground issue in June.

Agenda Item 27

Action: *Agency Member Sellers made a motion, seconded by Vice-chair Chang, to approve the request for a triple facade grant for the Granary project. The motion carried 3-1 with Agency Member Carr voting no and Agency Member Tate absent.*

Agenda Item 28

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Chang, the Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, tabled item 28 until June 18, 2003, requesting that staff review options and explore options for the deferral of undergrounding utilities.*

City Manager/Executive Director Tewes indicated that this was a unique and unusual process on how to proceed with these types of projects. He felt that the City has learned a lesson and that this unusual process would not be likely to be repeated because the Council has authorized a request for proposal process for downtown projects. Specifically, the Council/Agency has authorized staff to seek interest on the police building. In each of these instances, staff would require full packages. What was seen in this instance was that the applicant was making certain assumptions that were not required and therefore sized his loan request to the Council/Agency on assumptions that turned out not to be the case. He stated that the process will be different from here on out.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Legal Authority: Government Code 54956.9(a)

Case Name: San Jose Christian College v. City of Morgan Hill

Case Number: Ninth Circuit Court of Appeal, No. 02-15693

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 9:34 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 11:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session but that the Council/Agency would adjourn the closed session items to Friday, May 23, 2003, 12:00 p.m.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:07 p.m. to Friday, May 23, 2003, 12:00 p.m. to discuss closed session item 1.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY